1952.

File No. O Prohibition 52

Legal Department

A **BRANCH**

Subject:— Opinions under the Bombay Prohibition Act - 1949

P = 86
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It would be seen from the Collector's endorsement at page 53 ante that the agreement to supply liquor at reduced rates was not in writing; the Collector merely states that the licensee had agreed to the reduced rates in a meeting held in his office. There is no written acceptance of such reduced rates. On the other hand the Contractors do not admit that they had agreed to accept the reduced rates. From para 3 of the Director's report (page 33 ante) it appears that Messrs. Hormusji and Sons were allowed to run the distillery on the terms which were in force at the time of the intergration of the Rajpipla State, that is, the contractors were entitled to get the price for the supply of liquor to retailers at the rates specified in Schedule B. In other words, the license granted by the Rajpipla State had been recognized by the Excise Department unmodified. Messrs. Hormusji and Sons would therefore appear to be entitled to receive the price for that supply of liquor at the rates mentioned in Schedule B.

Sd/- J.R.Dhurandhar,
9/1.

Additional Secretary to Government.

U.O. to R.D. No. 245, dated the 10th January 1952.

4-Cs.

M.V.V.
16/6.

Legal Department.

It appears that the Excise administration of the Mudhol State was taken over by the Government of Bombay under an agreement executed in 1881 between the Ruler of the Mudhol State and the Bombay Government. Under the instructions of the Assistant Political Agent the Desai of Lokapur, one of the Inamdars in the Mudhol State, was informed that on the basis of the average income for the last ten years of his villages the compensation in respect of the excise income would amount to Rs. 433-15-7, which amount would be paid to him in two instalments - one in January and the other in July - from 1881 - 82. The Karbhari of Mudhol by his Yadi dated the 14th April 1881, informed the Desai of Lokapur that as the excise administration was taken over by the Bombay Govern - ment he should not farm out the country liquor and toddy shops in his villages. According to this order the Desai of Lokapur was paid his share of compensation till the year 1917. However, in 1917, it appears that it occurred to the Rajasaheb of Mudhol that as the compensation payable on account of the Excise administration included the amount payable to Inamdars and Estates he should ascertain that the shares in the compensation which these inamdars were receiving were rightfully received by them and consequently, he ordered an inquiry into the rights of the Inamdars to claim shares in the compensation payable to the State for the administration of the Excise revenue taken over by the Bombay Government . The inquiry relating to the rights of the Desai of Lokapur, it appears, was finished in 1941, when the Regent Rani Sahiba of Mudhol passed an order that the claim of the Desai of Lokapur for Abkari compensation should be rejected and he should be served with a notice to show cause why the amount of compensation paid to him unauthor-isedly so long and through mistake should not be recovered from him as he had suppressed to his knowledge the orders of Government in the matter. 'The orders of Government' referred to in the Regent's order appear to be the Government

of Bombay's orders of 1846. In those orders of 1846 it is stated that, "The Desai has claimed that Rs.30/- per annum should be paid on account of Bhindi(Teddy Juice) and Kalalji (liquor) from liquor contractors and for past Nukasani (arrears) Rs.330/-. In respect of the claim no evidence has been adduced and the Panch Award (1835) mentions this. Had there been any claim, the evidence would have been produced and it has not been produced. So the claim is refused and will not be granted." After the order of the Regent Ramabhiba of Mudhol in 1941, it appears that no effective steps were taken to recover the past payments made through mistake. After the merger of the State this question about the recovery of money from the Desai of Lokapur has been raised. The Director of Excise and Prohibition has opined that as the Indian Limitation Act was applied to the Mudhol State territory with effect from 28th July 1948 and as under Article 95 in the First Division under the First Schedule to the Act, the recovery is time barred, the recovery of the irregular payment of compensation to the Lokapur Desai should be waived. The Revenue Department has agreed with that view and has proposed to issue orders waiving the recovery of the Abkari dues from the Desai.Papers are shown to the R.L.A.

2. So far as the point of limitation is concerned, the view taken by the Director of Excise and Prohibition is not correct. The relevant Article applicable in this case is Article 149 and not Article 96. Article 149 prescribes a period of 60 years for the institution of a suit by or on behalf of Government and applies to all suits whatever when brought on behalf of Government. (see 40 Bom.166).But if the claim to recover this amount was barred by limitation under the law in force in the Mudhol State, it cannot be revived by the application of the Indian Limitation Act at the time of the merger. But in view of what is stated below it is unnecessary to consider the question of limitation.

3. The refund of the amount paid to the Lokapur Desai cannot be enforced as revenue arrears under section 187.....

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187 of the Bombay Land Revenue Code. If recovery is to be enforced it will have to be done through Court. Prima facie the claim in respect of the years from 1881 to 1892 is time-barred. The next question for consideration is whether the claim in respect of the remaining years can be enforced through Court.

4. Section 72 of the Indian Contract Act provides that a person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it. Mistake of law is not expressly excluded by the words of this section but section 21 shows that it is not included. The rule of common law is that money paid under a mistake or ignorance of fact may be recovered back. And this principle is embodied in section 72."It is not always easy to distinguish between mistakes of law and mistakes of fact. In equity a distinction has been drawn between mistakes relating to general law and mistakes relating to private right. But it is doubtful whether any such distinction can be drawn where the cause of action is for money paid by mistake. (See Chetty on Contracts, page 105). "And in equity the rule as to irrecoverability is not inflexible; there being cases in which the Court has power to grant relief against mistakes in law as well as against mistakes in fact - that is where there is any equitable ground which makes it in the particular case inequitable that the party who received the money should retain it; though relief is never given in the case of simple money demand against another. (ibid p.106). "Negligence on the part of the person paying the money in not discovering the true facts will not prevent him from recovering it if in fact at the time of payment he does not know them; the fact that means of knowledge were available to him is relevant only in so far as it may throw doubt on the genuineness of his alleged mistaken belief, or suggest that he intended to pay the money in any case without reference to the truth or falsehood of the de facto. (See Anson's English Law of Contract p.432).

4 Cs. | MVV. | 166.

'Ignorance of particular rights however excusable is on the same footing as ignorance of the general law. (See Pollock on 'Contracts' page 378). Applying these princip... to the facts of the present case it appears that the State had the means of knowing the Order of the Government of Bombay passed in 1846. But it is not understood how that Order was overlooked by the State. There is nothing on record to show whether that Order was in any way modified or rescinded later on. But there appears to be ample evidence to prove that the Desai of Lokapur did exercise his right of farming ees country liquor and toddy shops thereafter until 1881. In 1866 the Desai of Lokapur complained to the Mudhol State authorities that the servants of the State obstructed him in the enjoyment of his right and the Karbhari of the State wrote to him on the 17th September 1866 that the obstruction was removed and there was no objection to the Desai erecting distilleries and keeping shops in his inam villages. After the Excise administration of the State was taken over by the Bombay Government the Assistant Political Agent informed the Karbhari of the State as to what share of compen - sation the Desai of Lokapur was entitled to and in that communication it has been specifically stated that the compensation was determined on an average of income during the last ten years. This evidently implies that the Desai was in the enjoyment of his right during the period from 1870 to 1880. It is also clear that until 1917 no objection was taken to the right of the Desai to his share in the compensation. It is apparent from the preamble of the Order of the Regent Ramsahiba of Mudhol that the compensation was shared between the State and other Inamdars including the Desai of Lokapur. It is, therefore, clear that it was not the Desai of Lokapur alone who was claiming the right to farming country liquor and toddy shops in his inam villages and was paid compensation, but other Inamdars also did it and they were paid compensation.

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It is stated in the Order of the Regent Ranisahiba of Wadhal that the period of 1843 was the period of minority of the Ruler and consequently the State authorities might have lost sight of the order of 1846. There appears no substance in this contention. Although the Rajasahab was a minor the State was administered by the Regency Council through the Political Agent. Ordinarily, therefore, the Order of 1846 could not have escaped the notice of the authorities. In these circumstances it appears that there is not much force in the argument that the Desai of Lokapur suppressed Government's Order of 1846 and took advantage of the minority administration. Whatever that may be, the most important point for the consideration is whether the payment of compensation during all these years was made through mistake and whether such mistake is a mistake of law or of fact. As stated above, ignorance of particular rights is on the same footing as the — from ignorance of general law. Assuming that the Desai of Lokapur had no right to the compenbation, the amount of compensation already paid to him must be deemed to have been paid to him through the ignorance of the right of the Desai, and, as such, it amounts to an ignorance of law. It would, therefore, follow that it was not a mistake of fact but was a mistake of law. Consequently, even if the claim is made through a Court it is mlikely to fail. Besides, it is a very stale claim and the Desai who received the payments is since dead. It would not be equitable to enforce the claim for repayment against the heir of the deceased Desai. Besides it appears from the draft letter at ₹ 42 of the file that the Diwan of the State intended to waive the recovery. In these circumstances the claim for refund of compensation may be waived.

Sd/- J.R.Dhurandhar,
14/1.
Additional Secretary to Government.

U.R. to R.D.No.492, dated the 14th January 1952.

4 Cs.
N.V.V./16.6

LEGAL DEPARTMENT.

Neither clause (e) nor clause (f) of section 144(1) of the Bombay Prohibition Act has any application to the present case. There is not provision in the Bombay Prohibition Act providing for making any rules for fixing the rate of the Government stock of hemp. Consequently the Ganja stock, in the present case being Government stock, all that is necessary is to fix a reasonable rate and this can be done either by Government or by the Director of Excise and Prohibition on being authorised so to do by an executive order by Government.

Sd/- J.R.Dhurandhar,
20/2.

Additional Secretary to Government.

U.R. to R.D. No. 2741., dated the 21st February 1952.

A-Cs.

M.V.V.
16.6.

Office of the R.L.A.

The question raised for the R.L.A's consideration in the present case is whether it would be legally feasible to grant to a co-operative society the monopoly of buying and selling mhowra flowers in a particular locality.

Sub-section (2) of section 60 of the Bombay Prohibition Act prohibits the collection, transportation or sale or purchase or having in possession of mhowra flowers by any person except under the authority and subject to the conditions of a licence, permit or pass granted in that behalf. The Bombay Mhowra ~~Mhh~~ Flowers Rules, 1950, made by Government provide for the making of applications for the grant of licence for the possession, sale, etc., of mhowra flowers. It would, therefore, be open to any person to apply for the grant of licence under sub-section (2) of section 60. The proposal now made to grant to a co-operative society the monopoly of buying and selling mhowra flowers would be in contravention of article 19(1)(g) of the Constitution of India whereunder all citizens have the right to practise any profession or to carry on any occupation, trade or business. In Motilal V. Uttar Pradesh Govt. (1951 Allahabad 257 at p.312) it was held that no monopoly can be created either in favour of the State or in any other person have by acts of legislation, for monopolies affect other people's interests. In Rashid Ahmed v. Municipal Board, Kairana (1950 S.C.J. 324) it was held that if there is no reasonable justification, a law or bye-law creating a monopoly in favour of a private trader would be void for every citizen has an equal right to trade within the territory of India. In view of the Mhowra Flowers Rules, 1950, - Rule 5 in particular reasonable justification cannot be pleaded for granting the proposed monopoly by the exercises of executive discretion. By virtue of the recent amendment to the Constitution the

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State can no doubt create a monopoly in favour of a corporation owned or controlled by the State. A Co-operative Society cannot be said to be a corporation 'controlled' by the State in the sense required by the context. It would, therefore, follow that the grant to a co-operative society of the monopoly of buying and selling shoora flowers in a particular locality would not be legally feasible.

Sd/- P.M.Lal,
20/2.

Remembrancer of Legal Affairs.

U.R. to R.D.No.2775, dated the 20th February 1952.

A-Cs.

M.V.T.
16/6.

Legal Enactment.

In this case orders have been served on the applicants both under sub-section(1) and sub-section (2) of section 59 of the Bombay Prohibition Act, 1949. Under sub-section (2) of that section any stock of intoxicant, hemp or mhowra flowers left undisposed of after the date specified in an order issued under sub-section (1) is liable to forfeiture to the State Government by the order of the Commissioner. The contention of the applicants is that their stock of foreign liquor cannot be forfeited as it is all duty paid stock and has been held by them legally. The question whether duty has been paid on the stock is irrelevant. Action under section 59 of the Bombay Prohibition Act, 1949, can be taken even if duty has been paid on the stock to be forfeited. A further question for consideration in this case, therefore, is whether section 59, and in particular sub-section (2) of that section, which authorises forfeiture of stock of intoxicants, is a valid piece of legislation. If it is a valid piece of legislation, it would be competent to the Commissioner to serve on the applicants the order of forfeiture.

2. Similar questions have been considered in America and the decisions of the Supreme Court of America on this point are a useful guide in considering the question. The important American case on the question is that of Samuels v. McCurdy (267 U.S. 188). In that case certain intoxicating liquors held by one Samuels had been seized by the Government officer. The Supreme Court of America held that the State may, without compensation, seize and destroy liquor the use of which is made unlawful although it was lawfully obtained before the passage of the Prohibition Act. Following the decision in that case and the other cases cited in that case, it can be safely held that the States has power to seize and forfeit stocks of liquor

although.....

...although such stocks were lawfully acquired and a proper duty was paid p thereon. This right of the State to control the use of, and in some cases destroy, private property derives its source from the power which the States have of prohibiting such use by individuals of their property as will be prejudicial to the health, morals or safety of the public and this power, as observed in the case of Samuel Samuels v. McCurdy, cannot be burdened with the condition that the State must compensate such individual owners for pecuniary losses they may sustain by reason of their not being permitted, by noxious use of the property, to inflict injury upon the community.

3. It would be relevant to observe here that the Supreme Court, before which the validity of the whole Prohibition Act was recently challenged, has not considered section 39 unconstitutional. On the contrary, the observations of the Supreme Court in relation to the question of the provisions of sections 12 and 13 of the Prohibition Act being in conflict with article 19(1)(f) of the Constitution support the view that the power taken in section 39 of the Act of to forfeit the stocks of intoxicating liquor is not opposed to the Constitution. There is thus no substance in the contention of the applicants that their liquor stocks cannot be forfeited to Government.

Sd/- J.R.Dhurandhar,
18/2.

Additional Secretary to Government.

U.R. to R.D. No.195-Confl. dated the 19th February 1952.

A-Cs.

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430Sdt. 29.2.52.

Submitted with reference to R.D.note at p.6 ante. It appears that a sum of Rs.13275/10/8 is due from one Shri V.R.Mathkari to whom a country liquor shop at Sangir, District West Khandesh, had been farmed out in 1949-50. This gentleman has no property in India and/he is at present staying at Kalwal in Goa. The question is whether it would be possible to take any steps to recover the amount from Shri Mathkari.

2. It is presumed the arrears were recoverable as arrears of land revenue. In view of 'A' in the F.& S.D. note at p.5 ante that there is no reciprocal arrangement with the Portuguese Govt, for execution of decrees of Indian Courts it does not appear it will be possible to take any steps in the direction.

Sd/-
1/3.

D.S.(Opinion) Reply may be:-

If payment is to be enforced the only course open to Government would be to file a suit in the Portuguese Court.

Sd/- R.T.K./1.3

R.L.A. Sd/- P.N.Lad,
1/3.

U.O.N. to R.D. No.3370, dated 5th March 1952.

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16/6.

Office of the R. L. A.

The reasons given by the Director of Excise and Prohibition for granting refund of proportionate licence fees are not well-founded in facts. The facts show that the licences granted by the Baroda Government for the year1948-1949 ceased to be governed by the Baroda Abkari Act with effect from 15.10.1948, but that the Collector by his order No.XCL 114 dated 14.12.48 kept the licences in force upto 31.3.1949 and also issued permits of liquor for the period between 1.12. 1948 to 31.3.1949. He also seems to have recovered the amount of licence fees which was due under the terms of the licences for the months of October to December 1948. In these circumstances the claim put forth by the licencee deserves consideration in equity. It also appears that in respect of two other licencee the Prohi - bition & Excise Commissioner has granted such refund though on the basis of different facts. Strictly speaking, the constitutional position is that the Government of Bombay is not bound to pay refund arising out of acts and policy followed by the Baroda Government. However, in view of what has been said above, the case for refund deserves consideration.

Sd/- P.N.Lal,
29/5.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 9020, dated 30th May 1952.

A-Cs.

M.V.V.
16/6.

12846
30.6.52.

Submitted with reference to R.D. office note at pp.17-18 ante. Please see the letter of the Director of Excise and Prohibition dated the 30th April 1952.

2. By his order No.1325 P dated the 30th April 1947 the then Ruler of Sanchin had granted a licence in favour of M/S. Gordhandas K. Gandhi and Jagjivandas Bhikabhai for the vend of country liquor at the 14 state shops for a period of two years commencing from 1st April 1947 on an annual licence fee of Rs.2,7500 subject to the conditions mentioned therein. It appears that ten out of the State's country liquor shops were situated on the border and were called border shops while the remaining four were in the interior .

The director of Excise and Prohibition considers that since the strength of liquor was reduced with effect from 1st August 1948 the licence would not be binding on the licensee both in regard to the border shops as well as non-border shops and that since inspite of this the licensee continued to sell liquor at 13 out of the fourteen shops upto the end of August 1948. Proportionate licence fees for the five months ending with that period would have to be charged in respect of the licensees.

The R.D. considers that the Director's view that condition 8 applies to both to border and non-border shops is correct since otherwise it would have been so specifically mentioned. The R.L.A. is requested to advise whether the R.D. view is correct.

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Abkari licenses granted by Sanshin State
Construction of -

Seen and returned.

The view taken by Revenue Department is correct. The license being issued by the Sachin State as a whole for the interior and border shops, the reduction in the strength of liquor of the collective rations of 8500 L.P. Gallons could entitle the licensee under clause 8 of the license/ to avoid the entire whole license even in respect of the interior shops.

Sd/- P.N.Lal,
22/7.

Remembrancer of Legal Affairs.

U.R. to R.D. , No.12121 , dated.the 23rd July 1952.

4-Ce.

N.V.V.
16/6.

Office of the R.L.A.

By the agreement dated 12th December 1932 between the Thakore of Mohanpur and the Bhayats of Gadhada and Davli it was agreed that the liquor shops at the two places were owned by the Bhayats and that they were entitled to dispose of them by auction and retain the license fee. The licensees were however required to purchase the liquor required from the Taluka Distillery at Mohanpur. The Thakor had agreed to refund to the Bhayats at the end of every three months the amount of gain on liquor from the Taluka treasurey. On the merger of his ~~xk~~ taluka the Thakor has entered into a merger agreement of type II. The ~~xxxx~~ agreement of 1932 has not been saved by any provision in the agreement of merger. After merger the State Government is not bound to recongise the obligation under the agreement of 1932. "After a cession of territory the only enforceable rights against the new sovereign are those conferred by him after cession either by agreement, express or implied, or by legislation " The agreement of 1932 would not therefore be binding on the State Government. However as the claim in this case appears to be bonafide Government might consider whether the amount might not be paid as a matter of grace.

Sd/- P.K.Lad,
30/7.

Remembrancer of Legal Affairs.

U.N. to R.D. No.12687, dated the 31st July 1952.

L-Cs.
M.V.V.
16/8.

OFFICE OF THE R.L.A.

It appears that up to 1947 the Kundgol opium shop used to be auctioned out for a license fee of less than Rs.1,000/-, but in the year 1947-48 the shop fetched Rs.19,100/- as the bidders expected larger sale due to closure of opium shops in the adjoining parts of the Bombay State. The licensee began to press for larger supply of opium for sale but the Pant Pradhan of Jamkhandi ordered that instead of issuing opium as per demand of the licensee, it would be justifiable to issue it accord - ing to tradition seeing the proportion of consumption. During the previous years the sale of opium did not exceed 60 seers and on that basis the Collector of Dharwar after merger fixed the ration of the shop at 60 seers. The licensee is claiming compensation on the ground that under the license he was entitled to larger supply of opium as a failure of which he suffered loss.

The license was for a period from 1-8-1947 to 31-7-1948 and up to 8-3-1948, on which date the Jamkhandi State merged in Bombay State, it appears that only 23 seers of opium was supplied to the licensee. Thereafter from 15-3-1948 to the end of the licence period 33 seers of opium was supplied to the licensee. It is apparent, therefore, that after the merger the licensee was supplied 33 seers of opium during the period of about 4 months. If he had any grievance for short supply it may be for the period before merger, for which the Bombay Government cannot be responsible. Consequently, no compensation for the short supply during the pre-merger period could be claimed by the licensee. It is not known

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.....whether there was any short supply after the merger. Besides, the claim for compensation is already time - barred. Consequently, the claim for compensation, whether it be for the pre-merger period or subsequent thereto, being time-barred, the licensee can have no legal claim. It is, however, for Government to consider whether he can in equity be given some compensation for the period subsequent to the merger provided Government is satisfied that there was any short supply during that period.

Sd/- P.N.Lal,
5/9.
Amendment of Legal Affairs.

X

U.R. to R.D. No.14485, dated the 6th September 1952.

A.Cs.

M.V.V.
16/6.

OFFICE OF THE R.L.A.

Clause (a) of sub-section(1) of section 24 of the Bombay Prohibition Act, 1949, as it stands to day, provides that no person shall print or publish in any newspaper, news - sheet, book, leaflet, booklet or any other single or periodical publication or otherwise display or distribute any advertise - ment or other matter which commends, solicits the use of, or offers any intoxicant or the hemp. Following the decision of the Bombay High Court in what is known as the Prohibition case, the Supreme Court has held that clause (a) of sub-section (1) of section 24, so far as it prohibits commendation of any intoxicant or hemp, is void as offending against the right of freedom of speech and expression ~~xxxx~~ guaranteed by article 19 (1) (a) of the Constitution of India. In that case the Supreme Court has held that the prohibition against commending any intoxicant is a curtailment of the right guaranteed and is not saved by clause(2) of article 19 of the Constitution. Since then clause (2) has been amended by the Constitution First Amendment Act, 1951, but even the clause as so amended does save the prohibition against "commending". It is, therefore, proposed to omit the word "commend" from clause (a) of section 24(1) of the Bombay Prohibition Act, 1949 when the introduced Bill for the amendment of the Act will be sent/~~introduced~~/ in the Legislature. However, even if the word "commend" can no longer stand in clause (a) of section 24(1) of the Prohibi - tion Act, it will not be open to any person to publish any advertisement which solicits the use of or offers any intoxi- cant or hemp. Such advertisement shall, subject to the provisions of sub-sections (2) and (3) of section 24 of the Act come within the prohibition of the Act and any person publishing such advertisement will be liable to punishment under section 73 of the Act.

Sd/- P.N.Lad,

Remembrancer of Legal Affairs.

U.R to office of C.M. No. 12103 , dated the 23rd July 1952.

4-Co./M.V.V./
18/6.

Office of the R.L.&A.

The licence granted to Shri Sunga Khubchand by the Karbhari of Tharad State was presumably not granted under any provision of law. It was in the nature of a contract for the manufacture and sale of liquor. Under the terms of the contract the State had not reserved to itself the power to order the closure of the shop for any particular reasons. The licensee being allowed to operate his license even after merger would in equity be entitled to a proportionate refund of the license fee for the closure of the shops in compliance with the order issued by the Collector as a measure of prohibition.

Sd/- P.N.Lal,
11/9.

Remembrancer of Legal Affairs.

U.R. to R.D., No.1(926-A, dated the 12th September 1952.

4-Cs.

M.V.V.
18/6.

Office of the A.G.A.

It is admitted that Tinctura Zingiberis (Conc.) was a mistake for Tinctura Zingiberis (Fortis); and that there is no separate preparation of the former description. In view of the wrong description apparently it will not be possible to recover the amount especially in respect of past periods. The real question that arises however is under that provisions of the notification duty was being levied in respect of the article in question after the supersession of the notification of 1948. The Director of Excise reports in his letter at page 81 ante that the article in question was liable to duty at Rs.5/- per proof gallon of spirit contents during the period from 16th December 1948 to 9th February 1952, on which date the preparation was declared by the Director to fall under item 7 (b) of the Schedule to the notification of 1949. The notification dated 16th December 1948 was superseded by the notification dated 23rd July 1949. This latter notification does mention Tinctura Zingiberis (Fortis). specifically as one of the articles chargeable with duty. Both under clauses (a) and (b) of item 7 in the Schedule to the notification of 1949 preparations are required to be declared by the Prohibition Commissioner as being either incapable of being abused as beverages or as being capable of being so used Before duty could be levied on them. Since the Commissioner states that Tinctura Zingiberis(Fortis) was declared as a preparation capable of being used as a beverage under item 7(b) on 9th February 1952 only, the Revenue Department is requested to ascertain from the Director before a definite opinion is expressed in this case under what provision of the notification the article in question was charged with duty till the date of its declaration under

 item ...

item 7(b).

Sd/- P.N.Lal,
29/7.

Remembrancer of Legal Affairs.

U.P. to R.B. , No. 737-Genl. dated the 30th July 1952.

A-Ge.
M.V.V.
18/6.

R.L.No.969-Genl., dated 16-9-52.

Submitted with reference to Office note at pages 37-38 ante. In reply to the point raised in this Department u.r. at p.39 ante as to the authority under which Tincture Lini Iberis was being charged with duty between the period of the supersession of G.N., R.D. No. 10504/45, dated 16-12-1948 and the declaration of the article "as capable of being used as a beverage" under paragraph 7(b) of the Schedule to the Notification dated 23-7-1949 (i.e. between 23-7-1949 to 9-2-1952), In view of the report of the Director of Excise and Prohibition at p.33 ante it would not be a worthwhile asking the two laboratories to xxxxxxxx pay the duty at the rate of Rs.17-8-0. The proposal made by the Director in his letter at p.1 ante viz. to waive the recovery may be accepted. A

Sd/- R.D./19.9.52.

D.S.(Opinion) Sd/- R.T.K./19.9

R.L.A. Sd/- P.N.Lal,/20.9 A to A

U.O.R. to R.D. No. 955- Genl. dated 22nd Sept. 1952.

A.Gs.
N.V.V.
18/9.

No. 13066.
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 7th August 1952.

From

Shri P.M.Lad,I.C.S.
Secretary to Government and
Remembrancer of Legal Affairs,
Bombay.

To

The Secretary to the Government of Madras,
Legal Department,
Madras.

Subject:- Bombay Prohibition Act,1949.
Proof of attached article being intoxicant or liquor.

Sir,

I am directed to forward herewith a copy of the letter from the Assistant Public Prosecutor, Sangli, No. 248 dated 10-6-1952, and to state that recently in a prohibition case in one of the Courts in this State a point has been raised that the prosecution should lead expert evidence to prove that the attached article is an intoxicant or liquor. The practice so far followed was to call the panch witnesses to testify to the article being liquor and their evidence was considered sufficient. The argument now advanced is that neither the panch witnesses not the Police officers, who are laymen without scientific training, are competent to opine on the subject and their evidence cannot be accepted. If this line of reasoning is accepted, Government would be obliged to lead expert evidence in each and every case qhich will cause serious difficulties. The point is being raised in this State for the first time; but it is not known whether the same has been canvassed in the State of Madras. The reported decisions of the Madras High Court in do not show any such point to have been decided; but as there may be unreported decisions, I am to request you to kindly

4-Cs. P.T.O.

inform this Department whether this point has ever been raised and if so with what result. Copies of any judgment or judgments on the point may also be enclosed along with your ~~xxpky~~ reply.

Yours faithfully,

Sd/- P.M.Lad,
6/6.

Remembrancer Legal Affairs.

4-Cs.

M.V.V.
10/6.

2706 of 8-2-1952.

Submitted with reference to R.D.Note at page 37 ante. The Sachin State had in 1943 entered into an agreement with Messrs. R. Dorabjee and Company for the manufacture and supply of liquor in the State. Under clause 22 of the agreement the licensee had agreed to act in accordance with the Bombay Abkari Act and the rules made thereunder etc. Under clause 23 on the ~~xpix~~ expiry of the contract the licensee had agreed to hand over to the State stock of liquor not greater than the average monthly consumption for which he was to be paid at the same rate as that for liquor supplied under the terms of the contract. After the integration of the Sachin State the contractor was asked to take out a fresh licence under the Bombay Abkari Act, 1878, which had then been applied to the area of that State, if the licensee wished to continue the distillery at Sachin. As, however, Messrs. Dorabjee & Co., did not agree to do so in accordance with the terms offered by the Commissioner of Excise the distillery was closed from 29th January 1949 and the stock of 923 proof gallons of country liquor was taken possession of. A compensation at the rate of Rs. 2-8-0 per proof gallon of plain liquor and Rs.2-12-0 of Masala liquor was offered. The contractors accepted this under protest and are claiming a higher rate of compensation namely Rs.5/- in accordance with clause 23 of the agreement. Both the Director of Excise and the Revenue Department consider that Messrs. Dorabjee & Co., are entitled to compensation at that rate. The Ex K.L.A. is requested

4 Cs.| M.V.V.| 18-6

to advise.

Sd/- D.W.D./16.4.52

D.S.(Opinion).

The real point to be considered in this case will be whether the distillery was closed by the contractor himself of his own accord or whether he was asked to closed it by the Abkari Department.

Sd/- J.R.Dhurandhar.
25/6.

4- cs.

M.V.V.
18/6.

Legal Department.

The Director of Excise and Prohibition reports (page 43 ante) that orders for the closure of the Distillery were issued by him on 29th January 1949. The Collector was directed to close the distillery with immediate effect and to take possession of the stock lying therein for issue to the country liquor shops in the Sachin State. In that case the claim of the contractor to be compensated at Rs.5/- per proof gallon of liquor would appear to be valid. The proposal made by the Director of Excise and Prohibition in para 4 of his letter at page 13 ante to pay him at that rate may therefore be accepted.

Sd/- J.R.Dhurandhar,
4/10.

Additional Secretary to Government.

S.R. to R.D. No. 16367/A, dated the 4th October 1952.

4-Co.

M.V.V.
18/6.

Legal Department.

The question for consideration is whether under the provisions of the Bombay Abkari Act, 1878, the removal of medicated wine from a manufactory or a bonded warehouse is liable to excise duty.

It is contended that following the provisions of section 62 of the Abkari Act the Excise Department at no time called upon the said Company to take over a licence for the manufacture of Tonic Wine. It is true that until permission to remove tonic wine was refused by the Superintendent of Excise, Bombay, (vide letter at p.283 of Excise Department file) in August 1948, the Excise Department all along were under the impression that in view of the provisions of section 62, neither a licence for the manufacture of medicated wine was necessary nor any duty was payable in respect of the same. (vide p.243 of the said file). Section 62 however provides as follows :-

> "Exemption of medicated articles. - Nothing in the foregoing provisions of this Act applies to the manufacture sale or supply of any bona fide medicated article for a medicinal purposes by medical practi - tioners, chemists, druggists, apothecaries or keepers of dispensaries; but it shall be lawful for the Provincial Government at any time, by notifica - tion in the Official Gazette to prohibit the sale of any such article or class of such article within any defined local area or place or generally except under a licence from the Collector, which shall be granted on any payment of such fees and subject to such conditions as the Provincial Government may deem fit to prescribe."

Under this provisions medicated articles are exempted from the provisions of the Act -

(i) so far as such provisions relate to the manufacture sale and supply of medicated articles for medicinal purposes

and

(ii) in respect of such manufacture, sale and supply by medical practitioners, chemists, druggists, apothecaries and keepers of dispensaries.

The provisions of this section have no application at all in this case inasmuch as the exemption relates to manufacture, sale and supply only of medicated articles. Under the scheme of the Act, manufacture, sale and duties have been separately provided for. Parts IV and V provide for manufacture and sale and Part VI deals with 'Duties'. The provisions regarding exemption in respect of 'supply' of medicated articles cannot therefore include duties. Secondly the exemption is given to medical practitioners, chemists, druggists, apothecaries and keepers of dispensaries only. Since the Company did not fall in any of the aforesaid categories, it could not get any exemption from the provisions of the Act in respect of manufacture, sale and supply of medicated articles. Under these circumstances the action of the Superintendent of Excise in refusing the company to remove tonic wine without payment of duty was quite valid.

It is stated at page 99 ante that if a licence for the manufacture of tonic wine was required, Government would have never allowed the Company to manufacture it without a licence. In this connection, reference made to item 33 on page 81 of the Excise Manual is misconceived. First of all it is not known whether that the list of licences mentioned on page 81 is exhaustive and complete. Assuming that it is exhaustive it is quite clear from the next paragraph that the expression 'wine' is wide enough to include also "Medicated wines" and that section 62 grants exemptions from the provisions of the Act in respect of manufacture, sale and supply of medicated articles to a limited class of persons only. Licence therefore for the manufacture of medicated wine by the company was necessary. It is true that the company was allowed to manufacture tonic

wine without any license as also no duty was demanded for its removal from the company's manufactory but these facts cannot estop Government from recovering duty when the excise authorities noticed that it had committed an error in interpreting the provisions of section 62. There cannot be any estoppel on a question of law. The contention that for the purposes of the Act Government has always considered wine as belonging to a category different from that of Tonic Wine is not kkm therefore correct.

Section 15-A of the Bombay Abkari Act, 1878, provides that no intoxicant shall be removed from any distillery, brewery, ware-house or other place of storage established or licensed under the Act, unless the duty, if any, imposed under section 19 has been paid or a bond is executed for the payment thereof. Under section 10 also, no intoxicant could be transported unless duty under Chapter VI was paid. Section 19 lays down that an excise duty at the rates directed by Government may be imposed on any excisable article transported in accordance with the provisions of section 10. The term "excisable article" as defined in section 3(15) means any alcoholic liquor for human consumption or any medicinal or toilet preparation containing alcohol and the expression "intoxicant" includes excisable article. It is therefore quite clear that medicated wines are liable to duty under section 19 read with sections 10 and 15A/ The provision in respect of exemption from duty is a substantive provision and if it was the intention that any excisable article was to be exempted from duty, specific provision in that behalf would have been made in that behalf in the Act itself (Cf. section 107 of Prohibition Act). Since the Act did not provide for exempting excisable articles from duty, it was held in R.L.A's opinion No. 74-Confl. dated 25th February 1944 that liquor required by the Governor General and Governors for consumption of their household and guests was not exempt from payment of duty.

Government Notification, Revenue Department No.1349-G

4-Cs.
M.V.V./18.6

dated the 13th October 1931 (p. 199, Excise Manual, Third (Revised) Edition) issued under section 19 of the Bombay Abkari Act, 1878 provided that excisable articles specified in column 1 of the Schedule appended to that notification shall be chargeable with duty at the rate specified in columns 2 and 3 thereof, when such excisable article are -

(i) imported into the Bombay Presidency in accordance with the provisions of section 9(1), or

(ii) issued from any brewery or distillery established in the Bombay Presidency.

Item No.4 in the Schedule refers to "wines" which expression is again sub-divided into three categories viz. (i) champagne and all other sparkling wines are not containing more than 42 per cent of proof spirit, (ii) all other sorts of wines not containing more than 42 per cent of proof spirit, and (iii) all sparkling and still wines containing more than 42 per cent of proof spirit. From the Director's letter at p.1 ante it appears that the tonic wine in question did not contain more than 42 per cent of proof spirit. The word "wine" is not defined in the Act but the definition of liquor includes wine. Thus the Act except section 62, does not make any distinction between wine and medicated wine. The expression 'wine' must therefore be construed as wide enough to include all sorts of wines whether medicated or not. (Cf. in this respect proviso to item 3 of the Schedule) The contention that the word "wines" used in item 4 included all sorts of wines except medicated or tonic wines is untenable.

It is next contended that since the wine manufactured neither by them was/imported nor issued from a distillery or brewery it could never be liable to duty. The expressions "brewery" and "distillery" have not been defined in the Bombay Abkari Act. They will therefore have their ordinary dictionary meaning. Brewery means a factory or place made where beer, etc. are/by infusion, boiling and fermentation. From their notice at page 31 ante, it appears that the stock

of medicated wine was manufactured at Podar Mansion, Fort, Bombay and the G.C. & Co. held the necessary licence for the sale in that behalf. As the x medicated wine was manufactured at the aforesaid premises and stored there, it was a brewery within the meaning of the said notification and therefore the medicated wine was liable to payment of duty whenever it was to be issued from the said premises. The contention that the wine in question was never issued from a brewery and therefore not liable to duty under the said notification has not substance.

Sd/- J.R.Dhurandhar,
19/3.

Additional Secretary to Government.

G.R. to R.D., No.4248, dated the 19th March 1952.

4-Cs.

M.S.V.
18/6.

CONFIDENTIAL. Legal Department.

Shri Tackchand has been arrested for an offence under section 66(b) and section 85 of the Bombay Prohibition Act, 1949. The charge against him is that he has obtained liquor from a place other than that from which he was entitled under the conditions of his permit and, therefore, has committed a breach of condition (3) of the permit. As Tackchand is being prosecuted in a criminal court, the proper step which the Director should have taken is to suspend his permit and not to cancel it. Under section 54(3) of the Bombay Prohibition Act, it is open to the State Government to suspend the permit pending his trial. The order of the Director should be set aside and the permit should be suspended pending the trial of Tackchand.

Sd/- J.R.Dhurandhar,
20/10.

Additional Secretary to Government.

U.R. to R.D. No.1110/A, Confl., dated the 21st October,1952.

4-Cs.

M.V.V.
18/6.

Office of the R.J.A.

Suspension of license compensation for

Bombay Prohibition Act, 1949 - Sects. 54 & 55.

In his letter dated the 29th August 1952, the Director of Excise and Prohibition has stated that the Superintendent of Excise was not authorised under section 54(1) of the Bombay Prohibition Act to suspend the licence. The Deputy Commissioner, it appears, had instructed the Superintendent to suspend the licence as misuse of toddy was had been reported; but the too was not authorised under section 54(1) of the Act to order suspension of licenses (vide p.129 ante). It follows, therefore, that the licence in question was not suspended in exercise of powers under section 54 of the Prohibition Act and, therefore, section 55 has no application. The order of the Superintendent of Excise was unauthorised and it is for the consideration of Government whether the licensee should not be compensated for the loss which he might have suffered as a result of the order. It may, however, be pointed out that any such compensation will be only ex-gratia since no suit can lie against Government for the wrongful acts of its servants.

Sd/- P.H.Lad,
31/10.

Remembrancer of Legal Affairs.

U.R. to R.D., No.18204/A, dated the 1st November 1952.

A-Cs.
H.V.T.
18/6.

Office of the A.A.A.

Sub-section (1) of section 141 of the Bombay Prohibition Act, 1949, provides that if the State Government is satisfied that the inhabitants of any area are concerned in the commission or abetment of any of the offences punishable under sections 65 to 69, the State Government may, by notification in the Official Gazette, direct the employment of additional Police for such period as it thinks fit. Sub-section (2) of the said section provides that the cost of such additional Police shall, if the State Government so directs, be either in whole or in part defrayed by a tax imposed on the persons mentioned in the section or by a rate assessed on the property of such persons or both by a tax and by a rate so imposed or assessed. The word 'employment' used in sub-section (1) has not been defined in the Act. In Iyer's Law Lexicon the word "employed" has been defined as meaning engaged or occupied in the performance of work or duties. It is in this sense that the word "employment" has been used in sub-section (1) . It is not necessary that the additional Police employed in any particular area should be newly recruited. If, therefore, any members of Police are deputed from any other area to the area in which the inhabitants of that area are concerned in the commission or abetment of the offences mentioned in sub-section (1), those could be the additional Police employed in that area, so long as it is made clear that they are detailed for this duty. According to sub-section (2) the cost of such additional Police can be defrayed by the imposition of a tax or by a rate. The cost of such additional Police would include their pay for the period for which they are employed in the particular area, their travelling allowances and any other reasonable expenses which may be incurred by Government by the employment of such additional Police

4-X Cs.
M.V.V./18.6

in the particular area. If, therefore, as proposed by Secretary, Home Department in his note of x 27th October 1952, Police officers are deputed from the State Reserve Police Force, Government can recover the cost of ~~xxx~~ such Reserve Police Force from the persons specified in sub-section (2) of section 141 of the Bombay Prohibition Act.

Sd/- P.M.Lad,
16/11.

Remembrancer of Legal Affairs.

U.R. to H.D., No.18739/I B, dated the 11th November 1952.

A-Cs.

M.V.V.
18/6.

Legal Department.

The proposals of the Director of Prohibition in this case are:-

(1) The Military Supply Depots of the Government of India should be granted trade and import licence with certain conditions in order to enable the Depots to supply foreign liquor to military hospitals and military units.

(2) Similarly the military units should be granted licences to obtain the supplies of foreign liquor from military depots.

(3) A general order should be issued permitting the members of the armed forces to buy, possess and use foreign liquor without a permit or pass.

It does not appear that in making the above proposals the Director has considered the Prohibition policy laid down by Government in enacting the Bombay Prohibition Act. It is true that in enacting the Bombay Prohibition Act Government has treated armed forces as a special class and special provisions have been inserted in the Act for the supply of liquor to the member of the Armed Forced. These provisions are contained in section 39 of the Act. That section as amended by Bombay Act XXVI of 1952 empowers Government to issue permits for the sale, purchase, consumption and use of foreign liquor by armed forces in messes and canteens. In State of Bombay vs. Bulsara (1951) S.C.R. 682, the special classification in favour of armed forces was justified by the Supreme Court on the ground that the Act permitted the consumption and use of liquor by armed forces in military messes and canteens in which the sale or consumption of liquor is regulation by special rules and regulations. Relaxation of the said provisions to the extent proposed by the Director would

P.T.O.

not be permissible and would affect the validity of the Act. It is true that under section 139 (b) of the Act the Government is empowered to issue general or special orders, notwithstanding anything contained in the Act or the rules. But this power can be exercised in special cases in conformity with the policy laid down by Government and not to the extent proposed by the Director. The stocks lying in military depots can be sent to messes and canteens under through-passes issued under section 29 and licenses can be granted to military hospitals under section 31. The proposal to permit the military units to supply liquor to the members of armed forces would not be in consonance with the provisions of the Act and the policy of the Government embodied in such sections as section 39.

Sd/- J.R.Dhurandhar,
11/11.

Additional Secretary to Government.

U.R. to R.D. No. 1231/B-Confl. dated the 12th November 1952.

4-Cs.
M.V.V.
18/6.

L.D.R.I. 23149, dated 4/10/52.

Submitted with reference to R.D. office note at p. 25 ante.

2. It appears that a licence for the retail sale of toddy at Magdalla, Taluka Chorasi in the year 1948 - 1949 commencing on the 1st August 1948 was granted to Shri Kalidas Amji, and was cancelled on the 10th Sept. 1948 for alleged contravention of condition 11 of the licence inasmuch as, he kept about 14 gallons of toddy intended for sale in the licensed shop, which should have been kept in that shop, in a place other than that shop. He was also prosecuted for offence under section 45 (c) of the Bombay Abkari Act. By his order No. XTD/W, dated the 5th October 1949 the Collector of Surat directed that since under condition 1 of the licence the licensee was required to pay the licence fees for the whole year notwithstanding the cancellation of the licence and hat since he failed to so pay, the amount due from him should be recovered as arrears of land revenue. Before however the amount could be recovered by co-ersive process the accused was acquitted on 23-2-1951 by the Additional Sessions Judge, Surat, on an appeal against the order of conviction and fine made by the Resident Magistrate, F.C. Surat. The Collector of Surat considers that in view of the defaulter's acquitted by the Sessions Judge, the arrears standing against him, which are in respect of the period subsequent to the date of cancellation of the licence cannot now be recovered (Pl. see portion 'A' at p. 5 ante). The R.L.A. is requested to advise.

A-Ca.
M.V.V.
18/6.

Office of the R.L.A.

Bombay Abkari Act.

In view of his acquittal the licensee would not be deemed to have committed any breach of condition 11 with the result that action taken under condition 29 of the licence would not be warranted and the licensee fee for the period subsequent to the cancellation of the licence cannot be recovered from the licensee.

Sd/- P.M.Lad,
12/11.

Asst Remembrancer of Legal Affairs.

S.R. to R.D. No. 16974/A, dated the 14th November 1952.

4-Cs.

K.V.V.
18/6.

OFFICE OF THE R.L.A.

Bombay Prohibition Act, 1949 - sec. 141 - employment of additional Police.

A direction for the employment of additional police under section 141(1) of the Bombay Prohibition Act, 1949, will be justified only " if the State Government is - satisfied that the inhabitants of any area are concerned in the commission or abetment of any of the offences punishable under sections 65 to 69 of the Act". In this case the population of the area is 1000. But by reason of the explanation to section 141 the word 'inhabitant' shall include persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area, and landlords who themselves or by their agents or servants collect rents or revenue direct from rayats or occupiers in such area, notwithstanding that they do not actually reside therein. Therefore, the number of inhabitants may exceed 1000. Of these only 66 persons are shown to have been concerned in the commission of offences. The number of cognizable offences in 1951 is 33 while that in 1952 upto 15th June is only 5. It is stated that these cognizable crimes include Prohibition cases also. It is apparent, therefore, that all of them are not prohibition cases and that the prohibition cases would be less than the figures given. In view of the number of persons involved and the number of cases arising, it will not be possible to say that Government is satisfied that the inhabitants of the area are concerned in the commission or abetment of offences punishable under sections 65 and 69 of the Act. Besides, it will be noticed on a comparison of the figures given by the Police for the years 1950, 1951 and 1952 (up to 15th June) that there is a reduction in cognizable offences. The figures of the value of the wash and liquor attached and destroyed up to 15th May 1952 also shows a fall. In these circumstances and having regard to the fact that the cost of the additional police, which would come to .....

come to Rs.22000 and odd, would bear heavily upon the population, it does not seem expedient to direct employment of additional police.

Sd/- P.M.Lad,
26/11.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 19837/A, dated the 26th November 1952.

4-Cs.

M.V.V.
18/6.

Legal Department.

The first point raised by R.D. is whether import of liquor by smuggling can be said to be excluded from the provisions of the Bombay Prohibition Act, 1949, or whether only bona fide import is excluded. The case in connection with which this point has arisen relates to the import of liquor across the customs frontier of Goa, a Portuguese territory. Section 147 is a provision which relates to import or export across the customs frontier. Import and export across the customs frontier is an item in List I in the Seventh Schedule to Govt. of India Act, 1935, as well as to the present Constitution. It was not within the province of the Provincial Legislature or the State Legislature under the present Constitution to legislate in regard to import or export. In Emperor v. Dantas (I.L.R.(1940) Bom. 777) the Bombay High Court held that the ban on the possession of foreign imported liquor was not within the competence of the Provincial Legislature, but encroached upon the legislative competency of the Central Legislature. The decision was disapproved by the Federal Court in Kishori v. The King (1949,F.C.R.650), but the Federal Court observed that the extent of the encroachment by the Provincial Legislature on the powers of the Centre was important for determining the pith and substance of an Act of the Provincial Legislature. In order to get over such difficulties, a declaratory provision was inserted in section 147 of the Bombay Prohibition Act, 1949, stating that nothing in that Act should be deemed to apply to any intoxicant or other article in respect of its import or export across the customs frontier. In implementation of this provision, section 29 provides that consignments of articles may be permitted to pass through the State under a pass. But there is no justification for holding that import or export referred to in sect on 147 is confined only

..to import which is lawful. To import means to bring into the country. The enactments which regulate import or export across the customs frontier are the Sea Customs Act, 1878, the Land Customs, Act, 1924, and the Imports and Exports (Control) Act,1947. But the fact that any article has been imported otherwise than in conformity with the provisions of these enactments would not mean that no import within the meaning of section 147 of the Bombay Prohibition Act, 1949, has taken place. The said section, therefore, applies to imports both made lawfully in accordance with the provisions of the Central enactments, as well as to those not so made.

2. The second question is whether the State Police can take action in regard to offences committed on the customs frontier. This would depend on the question whether import has come to an end. As stated above, ordinarily as soon as the goods are landed, the import of such goods would come to an end. But some of the enactments such as the Sea and Land Customs Acts referred to above contain provisions enabling the customs authorities to recover import duties.Until the goods are outside the jurisdiction of the customs authorities, it would not be proper for the State Police to intervene. After the goods have left the jurisdiction of the customs authorities, it would be open to the State Police to take action for offences against local laws in relation to such goods. The matter, however, requires to be settled by the Prohibition Department with the Customs authorities.

3. The third question for consideration in this case is whether an offence has been committed in this case and, if so, by whom. It is clear form the evidence recorded by the Police that the liquor bottles were brought across the customs frontier of Goa and they

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.....were found in the saloon of Mr. Crawford. It appears from the report of the Director that the train which carried Mr.Crawford's saloon crossed the customs frontier and travelled over a distance of 2½ miles in Indian territory before it reached the Castle Rock Station. But the journey of the goods over that distance would be held as incidental to import and it would also be held that import came to an end at the Castle Rock Station. The word 'import' in the Constitution standing by itself does not include possession or sale which are within the scope of the Bombay Prohibition Act (State of Bombay v. Balsara (1951, S.C.R. 682). As, however, pointed out by the Director, possession up to that time was possession incidental to or for the purpose of import and would not come within the purview of the Bombay Prohibition Act, but possession subsequent thereto would be an offence under section 66(b) of the Bombay Prohibition Act. The person in possession of the liquor should in the first place have made a declaration under the Customs Act and should have obtained a pass for its through passage under section 29. The failure of the person supposed responsible for the possession of the liquor bottles to take any such step shows that the possession was neither bona fide nor legal.

4. The next question which will arise is as to who was responsible for the possession, i.e., who may be held to have committed the offence. According to the panchnama the bottles were found in the kitchen of the carriage. In the kitchen the persons present were the butler Tungwal Kuruswami and another servant. Thgwa Tungwal has admitted before the Police that he had brought the bottles and hidden them in the coal box and underneath the seat. It is stated that he has not resiled from that statement and has not made a confession. But in spite of this the evidence seems to be sufficient for his prosecution under section 66(h) of the Bombay Prohibition Act. As regards the complicity of Mr. Crawford, there are circumstances which raise suspicion against him. The general order of the Railway authorities that he is responsible for

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all illegal acts committed in his saloon would not afford any ground for holding that he has committed the offence. So also the circumstance that he handed some liquor bottles to the Madras authorities would not be sufficient for charging him with the offence in regard to the bottles found at the Castle Rock Station. It is not likely that any court would hold Mr. Crawford guilty unless the Police are able to find additional evidence to show his complicity.

Sd/- J.R.Dhurandhar,
3/11.

Additional Secretary to Government.

U.R. to R.D.No. 18323/A, dated the 4th November 1952.

A-Ca.
M.V.V.
19/6.

Legal Department.

Cancellation of liquor permit. Bombay P ohibition Act, 1949. Sec. 54(3).

Under section 54(3) of the Bombay Prohibition Act, 1949, it is provided that notwithstanding anything contained in the foregoing sub-sections, the State Government may cancel or suspend any licence, permit, pass or authorisa-sation without assigning any reason. This provision which was inserted before the Constitution came into force may be challenged on the ground of being opposed to the fundamental right under artilce 19 and may be held to be invalid (see R.L.A.' s opinions Nos. G- 425 of 14-9-51 and G-565 of 14-11-51. See also Anumathi Sadhukhan Sadhukhan v. A.K. Chatterjee, A.I.R. 1951 Cal. 90). It would not, therefore, be legally feasible to cancel a liquor permit under section 54(3) of the Act without assigning any reason. The permit, however, being subject to the provisions of this Act and the permit holder being bound not to be drunk in any public place, he would be deemed to have violated the provisions of section 85, if under the influence of drink he is involved in a motor accident. It would, therefore, be possible to suspend his permit pending his trial for being found drunk in a public place and then to cancel the same on his conviction. Government mayalso consider the question of adding an express condition to the effect in the permit under section 53.

Sd/- J.R.Dhurandhar,
18/11.

Additional Secretary to Government.

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U.R. to R.D. No. 1251/A/ dated the 17th November 1952.

4-Cs.

N.V.V.
18/6.

Office of the R.L.A.

Bombay Prohibition Act, 1949 - Section 141(1) - Employe--ment of additional police.

No offenders have been detected in the years 1951 and 1952. It would also appear from the District Superintendent of Police's report dated the 18th June 1951 that no offences have been registered in these years. Therefore the only ground on which the recommendation is for additional police is based is the finding of liquor and wash. Of this the quantity of liquor found is compara - tively very small. The finding and confiscation of this property is not in the circumstances sufficient to hold that the inhabitants of these two villages are concerned in the commission or abetment of offences punishable under sections 65 to 69 of the Act. A direction for the employment of additional police will not, therefore, be justified.

Sd/- P.[illegible].Lad,
10/12.

Remembrancer of Legal Affairs.

U.H. to H.D. No.20712-A, dated the 10th December 1952.

4-Cs.

M.V.V.
19/6.

Office of the B.L.A.

Bombay Prohibition Act, 1949.

Section 75.

Whether action possible in respect of playlet "Ekach Pyala" by Shri P.K. Atre.

The B.L.A. is requested to advise whether any action under section 75(b) and (c) of the Bombay Prohibition Act, 1949, can be taken in respect of the playlet entitled "Ekach Pyala" by Shri P.K.Atre, published in the Diwali number of Navayg.

2. The playlet "Ekach Pyala" by Shri P.K.Atre does not incite or encourage any individual or a class of individuals or the public generally to commit an offence under the Bombay Prohibition Act, 1949, or to commit a breach of any rule, regulation etc. thereunder. It only indicates that moderate drinking, namely one glass of wine every day, is beneficial to one's helth, and that the e ceas of ~~drink~~ drinking as well as prohibitio to thereof by law is detrimental ~~to~~/the society. At the most, it commends moderate drinking. The word " commends" in clause (a) and the whole of clause (b), in section 75 of the said Act, have been deleted by section 36 of Bom. XXVI of 1952. In view of the observations made by the Bombay High Court in ~~Fa~~ Fram Nalsara vs. State of Bombay (52 B.L.R. 799 at p.825), as concurred in by the Supreme Court, it appears that the playlet would be saved under article 19(1)(a) of the Constitution, and would not, therefore, be covered by clause (c) of section 75 of the said Act. No action can, therefore, be taken in respect of the playlet under section 75 of the Bombay Prohibition Act.

Sd/- P.H.LAD,
29/12.

Remembrancer of Legal Affairs.

U.R. to B.D. No. 21979/A, dated the 29th December 1952.

A-Ce.
H.V.V.
19/6.